

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
: 19-cr-354 (JSR)  
-v- :  
: ORDER  
CHRISTIAN NIEVES, :  
a/k/a "Eric Rosario" and :  
: ORDER  
ELIAS POLANCO, :  
: ORDER  
Defendants. :  
----- x

JED S. RAKOFF, U.S.D.J.

The defendants in this case -- Christian Nieves and Elias Polanco -- are charged with substantive and conspiratorial counts of witness retaliation and tampering. Counts One and Three accuse Nieves of retaliating against and intimidating a former federal witness, in violation of 18 U.S.C. §§ 1513(b)(1) and 1512(b)(3), respectively, and Counts Two and Four accuse the defendants of conspiring to commit the same, in violation of 18 U.S.C. §§ 1513(f) and 1512(k). Four motions are presently before the Court. First, Nieves moves to suppress the complaining witness' identification of Nieves on the steps prior to the attack and as the attacker. Dkt. No. 65. That motion is denied.

Second, Polanco moves to suppress the complaining witness' identification of Polanco on the steps prior to the attack. Dkt. No. 18. That motion is granted.<sup>1</sup>

Third, the defense renews its motion to dismiss Counts Two and Four of the Indictment. Dkt. No. 62. That motion is denied.

Finally, Polanco renews his motion for a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978). That motion is denied.

A memorandum explaining the reasons for these rulings will issue in due course. The Clerk of the Court is directed to close the entries at docket numbers 55, 62, and 65.

SO ORDERED.

Dated: New York, NY

March 29, 2021

  
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JED S. RAKOFF, U.S.D.J.

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<sup>1</sup> To the extent that Nieves or Polanco move to suppress the complaining witness' identification of their respective voices in telephone calls made the day after the attack, those motions are denied.